IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 917 OF 1987

1. Mahadeo Maruti Nikam
2. Sarjerao Baburao Nikam
3. Bhiva @ Krishna Pandu Nikam
All Agri., residents of Shere
Tal. Karad. Dist. Satara ..Appellants
(Org.Accd.Nos.5, 14 and 17)

Vs.

The State of Maharashtra ..Respondent

WITH

CRIMINAL APPEAL NO. 995 OF 1987

1. Shamrao Dnyanu Nikam
2. Damodar Dhondi Nikam
3. Sayaji Rajaram Nikam ..Appellants
(Org.Accd.Nos.3, 6 and 20)

Vs.

The State of Maharashtra ..Respondent

Mr. R.R. Bhosale for appellants-org. accd. nos.14 and 17 in Cri. Appeal No.917 of 1987.

Ms. Aparna Shinde, Advocate appointed for appellant-org. accused no.20.

Mr. D.P. Adsule, APP for State in both the appeals.

**CORAM: B.H. MARLAPALLE, J.**

**Date : July 06 & 20, 2007.**

**ORAL JUDGMENT.:**

1. Both these appeals arise from the order of conviction and sentence passed in Sessions Case No. 105 of 1986 by the learned II Additional Sessions Judge, Satara on 17/10/1987. In all 22 accused were put on trial for the offences punishable under Sections 147, 148 and 323 read with Section 149, Section 325 read with Section 149 and Section 307 read with Section 149 of IPC. All the accused, except accused nos. 3, 5, 6, 14, 17 and 20, came to be acquitted from all the offences levelled against them. Accused nos.3, 5, 6, 14, 17 and 20 have been convicted for the offence punishable under Section 307 read with Section 149, accused nos.3, 5, 14, 17 and 20 have also been convicted for the offence punishable under Section 148 but no separate sentence has been imposed on any one of them. Accused Nos.3, 6 and 20 have been sentenced to suffer RI for 10 and to pay a fine of Rs.3000/- in default further RI for two years for the offence punishable under Section 307 read with Section 149 of IPC, whereas accused nos.5, 14 and 17 have been sentenced to suffer RI for five years and to pay a fine of Rs.3000/- in default further RI for two years

for the very same offence. Accused no.3, in addition, has been convicted for the offence punishable under Section 325 of IPC for causing hurt to PW 11- Devdatta and sentenced to suffer RI for two years and to pay a fine of Rs.1000/- in default further RI for nine months. Accused No.5 has been convicted for the offence punishable under Section 323 of IPC for having caused hurt to PW 6 - Hirabai and sentenced to suffer RI for one year and to pay a fine of Rs.500/- in default RI for three months. Accused No.14 has been convicted for the offence punishable under Section 323 of IPC and sentenced to suffer RI for one year and to pay a fine of Rs.500/- in default RI for three months. Accused No.17 has been convicted for the office punishable under Section 323 read with Section 149 of IPC and sentenced to suffer RI for one year and to pay a fine of Rs.500/- in default RI for three months and Accused No.20 has been convicted for the offence under Section 323 of IPC for causing hurt to PW 11- Devdatta and sentenced to suffer RI for one year and to pay a fine of Rs.500/- in default RI for three months. All the substantial sentences imposed against all the accused have been directed to run concurrently. While admitting these appeals all the appellants were

released on bail. It is stated across the bar that during the pendency of these two appeal, accused no.3 and accused no.5 died and, therefore, these two appeals survive only in respect of accused nos.6, 14, 17 and 20.

2. The incident occurred on 9/7/1984 in the Gaothan area of village Shere and Tikatane Maruti Temple on the way to Karad. It appears that some of the houses in the Harijan Vasti of village Shere had lost on account of flood in the year 1965 and, therefore, the Government had taken steps to acquire the land during the period from 1968-70 for the rehabilitation of this Harijan Vasti. Nothing much had further progressed till the said Vasti became a victim of similar flood in the year 1976. Though the land from Survey No. 179 and the neighbouring survey numbers was acquired in the year 1970 the demarcation order was made only in the year 1978 and the allotment of plot was done on or about 15/6/1984 consequent to the orders passed by this court in writ petitions filed by some of these affected residents. PW 5 - Hindurao was working as a primary school teacher and so was his wife PW 6- Hirabai. Hindurao was one of

the affected families along with other members of the Harijan community and, therefore, on allotment of plots on 15/6/1984 they had decided to have the function of Bhoomi Poojan on 9/7/1984. Plot holders allegedly went to the site and they were obstructed by the original land owners. PW 5 - Hindurao had conveyed a meeting on earlier day i.e. on 8/7/1984 and the next day was Ashadhi Ekadashi it was decided to have the Pooja performed on the land allotted which was about 2 Kms. away from the original Vasti. When the land owners obstructed the plot allottees from performing the Pooja they decided to march to the Tahsidlar at Karad and to seek justice. It is alleged that a mob of about 100 persons attacked them near the Tikatane Maruti Temple on 9/7/1984 at about 1.30 p.m., on being informed that they were proceeding to meet the Tahsildar at Karad to seek justice. The complainant Shankar (PW 9), the leader of the group Hindurao (PW 5), his wife Hirabai (PW 6), son Pranaykumar Sawant (PW 8), nephew Devdatta (PW 11), Anil s/o Shankar Sawant (PW 10) and Dhondiram (PW 12) were allegedly attacked by the mob and more particularly the owners of the land which was acquired by the State Government and was directed to be

allotted by making plots to the members from the Harijan Vasti, including Hindurao and his relations as per the order passed by this court in writ petitions filed by some of these affected residents. It was alleged that the attacking party was armed with deadly weapons like axe, iron rods, sticks and wooden handles and in this attack PW 5 Hindurao, PW 8 Pranaykumar, PW 11 Devdatta and PW 12 Dhondiram and PW 10 Anil were injured. They were treated by PW 7 Dr. M.D. Salunkhe, who had also issued injury certificates. On the basis of the complaint made by PW 9 Shankar, an F.I.R. came to be registered at Exh.66. On completion of the investigation, charge-sheet came to be filed against 22 accused persons for the offences punishable under Sections 147, 148, 323 read with Section 149, 325 read with Section 149 and Section 307 read with Section 149 of IPC. Accused No.6 has been convicted and sentenced only under Section 307 read with Section 149 of IPC and not under any other Sections like 148, 323

or 325 of IPC. There were about 6 to 7 injured eye witnesses to the incident on account of their being a members of the group which was being led by PW 5 Hindurao to meet the Tahsildar on the date of the incident and were proceeding to Karad. By following the law laid down by the Supreme Court in the case of Masalti vs. State of Uttar Pradesh **[AIR 1965 SC 202]**, it will be necessary to follow the rule of prudence in appreciating the evidence of these injured eye witnesses, including the complainant PW 9. If the depositions of more than one witnesses confirm the involvement of any of these four accused in assaulting PW 5 Hindurao and PW 11 Devdatta or any one of them, their/his conviction for the offence punishable under Section 307 of IPC will have to be confirmed.

3. To support these observations let us refer to the medical certificates which have been proved through the depositions of Dr. M.D. Salunkhe (PW 7). Exh. 57 is the injury certificate certifying the injuries sustained by PW 9 Shankar and both the injuries are simple, first injury CLW on right sub-mandigular region 1/2" x 1/2" x 1/4" and the second one is contusion on the left temporal region 1"

x 1". Exh. 58 is the medical certificate certifying the injuries sustained by Pranaykumar s/o Hindurao Sawant (PW 8). Both the injuries are again simple in nature. Exh.59 is the medical certificate certifying the injuries sustained by PW 5 Hindurao. The said certificate speaks of following three injuries:-

(a) C.L.W. on scalp Rt parital bone (Rt side - of bone) 3" x 1/4" x 1/4".

(b) C.L.W. on Lt parital bone 3" x 1/2" x 1/4".

(c) C.L.W. on Lt. middle finger 1st phelexfracture compound.

. P.W.7 in his depositions clearly stated that injury nos.1 and 2 sustained by PW 5 Hindurao were sufficient to cause his death if he had not received medical treatment in time. At Exh.60 is the medical certificate certifying the injuries sustained by PW 11 - Devdatta and the injures are as under:-

(a) C.L.W. over lt parital bone 3"x1/4"x1/8"

fresh bleeding.

(b) Pain over Rt shoulder No visible injury.

(c) C.L.W. over Rt lateral mallicles 1/2"x1/4"x1/8".

. P.W. 7 in his depositions before the trial court stated that the injury nos.1 and 3 were sufficient in the ordinary course to cause the death of Devdatta if he had not received medical treatment in time. Exh. 61 is the medical certificate issued in respect of Dhondiba (PW 12). It is thus clear that it is only PW 5 and PW 11 who had sustained injuries which were likely to cause death if they had not received medical treatment in time. We will have to, therefore, examine the assailants who injured these two witnesses by following the law of prudence as enunciated in Masalti's case (Supra), out of the remaining four accused i.e. accused nos.6, 14, 17 and 20. Though PW 5 Hindurao in his depositions in examination-in-chief stated that accused no.6 had inflicted first blow of axe on his head, the same

statement did not find place in his statement recorded by the police initially and when the defence cross-examined the I.O. (PW 17), the I.O. stated that Hindurao had not uttered any word regarding the attack on him by accused no.6 with an axe. However, PW 6 Hirabai and PW 10 Anil clearly stated about the accused no.6 having given a blow of an axe on the head of PW 5 Hindurao. The injuries certified by the doctor in the medical certificate at Exh.59 also corroborate this evidence of PW 6 and PW 10. Hence, the role played by accused no.6 in causing injury to Hindurao with an axe blow has been proved.

4. So far as accused no.14 is concerned, only two witnesses have attributed or stated about some assault by him. PW 6 stated that accused no.14 assaulted him with stick and gave two blows on his back and none of the other injured witnesses like PW 5, PW 8, PW 9, PW 10, PW 11 or PW 12 have stated about any attack/ assault at the hands of accused no.14. Hence there is no material in support of the prosecution case that accused no.14 is guilty of an offence punishable under Section 307 of IPC. It is also to be noted that only one witness has stated that accused no.14 caused

assault to him by a stick and by following the law laid down in the Masalti's case, the said statement cannot be relied upon in isolation and unless confirmed by any other injured witnesses. Therefore, the conviction of this accused no.14 for all the offences as stated in the impugned order i.e. under Sections 148, 307 read with Section 149 and 323 of IPC could not be proved by the prosecution.

5. Now coming to accused no.17, he has again the same case as accused no.14. Only one witness i.e. PW 9 Shankar had stated before the trial court that accused no.17 assaulted him with the rod of axe and this is not corroborated by any other witnesses and, therefore, accused no.17 will also stand acquitted from all the offences i.e. under Sections 148, 307 read with Section 149 and 323 read with Section 149 of IPC.

6. We then come to the case of accused no.20. PW 5 Hindurao had not deposed that accused no.20 had assaulted him in any manner. Though PW 11 Devdatta had stated that accused no.20 had assaulted him with an axe on his head, the same has been found to be

missing in the statement recorded by the police and the omission was proved in the cross-examination of the IO. However, the depositions of PW 6 clearly proved that accused no.20 had assaulted PW 11 by an axe, but this evidence of PW 6 is not corroborated by the depositions of any other witnesses. Therefore, it will be very difficult to hold him guilty for an offence punishable under Section 307 read with Section 149 of IPC. The evidence of PW 8 and PW 9 did make out a case against accused no.20 for the offences punishable under Sections 148 and 323 of IPC. Hence this accused no.20 will have to be acquitted for the offence punishable under Section 307 read with Section 149 of IPC and his conviction under Section 148 and 323 of IPC would stand confirmed.

7. The chart regarding the depositions of PWs 5, 6, 8, 9, 10, 11 and 12, as prepared by Mr.Bhosale was circulated and Mr. Adsule the learned APP agreed with the said chart and, therefore, it has been followed. it also tallies with the depositions of each of these witnesses.

8. In the premises, these appeals succeed partly.

. The accused no.14 - Sarjerao Baburao Nikam is hereby acquitted from the offences punishable under Section 148 of IPC as well as Section 307 read with Section 149 and Section 323 of IPC. The impugned order of conviction and sentence passed against him is hereby quashed and set aside.

. The accused No.17 - Bhiva @ Krishna Pandu Nikam is hereby acquitted for the offences punishable under Section 148 as well as Section 307 read with Section 149 and Section 323 of IPC. The impugned order of conviction and sentence passed against him is hereby quashed and set aside.

. The conviction and sentence of accused no.20 - Sayaji Rajaram Nikam for the offences punishable under Section 148 and Section 323 of IPC for causing hurt to PW 11- Devdatta is hereby confirmed. However, he is acquitted from the offence punishable under Section 307 read with Section 149 of IPC.

. The conviction of accused no.6 - Damodar Dhondi Nikam for the offences punishable under Section

307 read with Section 149 and Section 148 of IPC for causing injuries to PW 5 - Hindurao is hereby confirmed. On the point of sentence it is required to be noted that he was on bail all along and the incident had taken place on 9/7/1984 i.e. about 23 years back and the accused no.6 was shown of the age of 41 years and as of now he is about 64 years of age. Having regards to the passage of time and the peculiar facts and circumstances of this case, his sentence is reduced and he is directed to suffer RI for three years and to pay a fine of Rs.1000/- in default to suffer SI for 30 days more.

. The accused no.20 and accused no.6 shall surrender to their bail bonds forthwith and they are entitled to set off under Section 428 of Cr.P.C.

**(B.H. Marlapalle,J.)**